

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 04-0037
Sales Tax
For the Years 2000, 2001, and 2002

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ISSUE

I. Sales Tax—Assessment; Rental of Ceremonial Caskets

Authority: IC 6-8.1-5-1(b); IC 6-2.5-2-1; IC 6-2.5-4-10(a); 45 IAC 2.2-4-27(d)(3)(B); Mason Metals v. Dept of State Revenue, 590 N.E.2d 672 (Ind. Tax 1992); **Sales Tax Information Bulletin #49**, December 1997.

Taxpayer protests the assessment of sales tax on the rental of ceremonial caskets to clients who desired public viewing of the deceased before the cremation of the body.

II. Sales Tax—Assessment; Calculation of the deficiency amount

Taxpayer protests the calculation of sales tax due on one particular contract used in a 19 contract sample employed to calculate the sales tax assessment.

III. Tax Administration—Negligence Penalty and Interest

Authority: IC 6-8.1-10-2.1(a)(3); IC 6-8.1-10-2.1(b); IC 6-8.1-10-1(a); IC 6-8.1-10-1(e); 45 IAC 15-11-2(b); 45 IAC 15-11-2(c).

Taxpayer protests the imposition of a 10% negligence penalty and the assessment of interest on the sales tax deficiency.

STATEMENT OF FACTS

Taxpayer owns and operates funeral homes in Indiana. Taxpayer was examined by the Department for calendar years 2000, 2001, and 2002. An assessment for sales tax deficiencies was issued as a result of the audit examination. Taxpayer protested the assessment for sales tax due on the rental of ceremonial caskets rented to clients who desired public viewing of the deceased before the cremation of the body. Additional facts will be discussed below.

I. Sales Tax—Assessment; Rental of Ceremonial Caskets

DISCUSSION

All tax assessments are presumed to be accurate; the taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1(b). Indiana retail transactions are subject to the imposition of an excise tax—known as the state gross retail tax. IC 6-2.5-2-1. Under IC 6-2.5-4-10(a), a person is a retail merchant making a retail transaction when he rents or leases tangible personal property to another person.

A ceremonial casket is used in funeral services where the client desires a viewing prior to the cremation of the deceased. A viewing is not required prior to cremation; a direct cremation can occur—in which the deceased is cremated without a public viewing of the body. Viewings are the prerogative of a client. State law does require that a cremated body be placed in an alternative container for cremation. An alternative container can be a cardboard box or a pine box. The box merely is a container that allows the body to be handled and transported. For viewings, clients choose to have the deceased presented in a ceremonial casket, which is rented for the services and then is returned to the funeral home.

Taxpayer forwards 45 IAC 2.2-4-27(d)(3)(B) to support its argument that the rental of a ceremonial casket is a sales tax exempt transaction. The regulation states:

The rental of tangible personal property together with an operator as part of a contract to perform a specific job in a manner to be determined by the owner of the property or the operator shall be considered the performance of a service rather than a rental or lease provided the lessee cannot exercise control over such property and operator.

Taxpayer argues that because Indiana law allows only a licensed funeral director to perform a funeral service, the funeral director acts as the operator of the ceremonial casket—precluding the lessee from exercising control over the property and operator. While a novel argument, it is not persuasive. The regulation is written to address the rental of heavy equipment that is used by the operator of the equipment in a manner determined by the operator—not by the person paying for the rental. An example would be where a person hires a contractor for a project and in order for the contractor to complete the project, the contractor rents a piece of heavy equipment. The person does not control the property and the operator; the contractor controls the equipment and the operator in the fulfillment of the project.

Taxpayer compares itself to a contractor hired for a project. A ceremonial casket is not a piece of heavy equipment that requires an operator in order for the function and the use of the ceremonial casket to be fulfilled. Understandably, the alternative container with the body of the deceased will need to be placed inside the ceremonial casket, and this is done by the funeral home providing the services. There are no mechanisms, buttons, knobs, controls, wheels, or the like of a ceremonial casket that need to be controlled by an operator. A ceremonial casket is a decorative container with a lid. Taxpayer places the body into the casket and removes the body from the casket. Taxpayer moves the casket into place for services, and opens and closes the lid as needed. All this is done at the request and direction of the client. While the client does not stand over Taxpayer as the tasks are done, the client does tell Taxpayer which body to place into the casket, where to place the casket, and when to remove the body from the casket. While Taxpayer facilitates the accomplishing of all this—suggesting the best method of execution—the client controls the use of the ceremonial casket. Taxpayer fulfills providing services and disposition of the body in the manner directed by the client. The client is the one who chooses

whether to have a viewing. And to accomplish this, the client rents a ceremonial casket and then tells Taxpayer how to fulfill the client's viewing expectations. The client rents and controls the casket; Taxpayer is the agent who fulfills the requests.

Taxpayer cites Mason Metals v. Dept of State Revenue, 590 N.E.2d 672 (Ind. Tax 1992), to support its position that it is an operator who controls the ceremonial casket. In Mason Metals, a corporation engaged in the recycling and manufacturing of tin products entered into agreements in which a company provided a semi-tractor and a driver to haul the corporation's semi-trailers. The Tax Court held that the corporation's transactions with the company were not leases subject to sales and use tax. The decision noted that—in general—sales and use tax does not apply to the provision of transportation services. Taxpayer is not providing transportation services by way of the ceremonial casket. The casket is a container. Transportation services are provided by other means. The Tax Court determined in Mason Metals that the corporation did not have possession and control of the semi-tractor; the corporation had no control over the routes taken by the drivers in getting to their destinations and semi-tractor was not used exclusively to haul the corporation's products. The clients of Taxpayer control where the ceremonial casket is to be taken and placed. As well, during the rental period, the casket is exclusively used to contain the body of the deceased. But the most striking distinction between the facts of the Mason Metals case and the facts of this tax protest is the disparity between a semi-tractor, which provides locomotion, and a casket, which is a container. If a comparison is to be made, the ceremonial caskets are more akin to the semi-trailer—which hold the contents.

Finally, **Sales Tax Information Bulletin #49**, December 1997, lists on page 2 sales taxable items and exempt items. The exempt items include transportation services, such as: funeral cars, family cars, and flower cars. Applying this to Mason Metals, the car used to transport the ceremonial casket is the analog to the semi-tractor. It is what provides the locomotion to transport the casket. Taxable items listed in the Bulletin include: caskets and cremation caskets. The Department has placed Taxpayer on notice—by way of the Bulletin—that ceremonial caskets are a taxable product supplied in a funeral service.

FINDING

For the reasons stated above, Taxpayer's protest is denied.

II. Sales Tax—Assessment; Calculation of the deficiency amount

DISCUSSION

At the hearing, Taxpayer presented the hearing officer with a copy of a contract used by the Department in a 19 contract, 2 month sample used in the audit to determine the sales tax due. Taxpayer stated that the Department incorrectly calculated the sales tax due on the contract. Taxpayer explained that the contract listed the prices of the services and products supplied to that client—but that a discount was taken off the total cost. Taxpayer presented the hearing officer with a copy of the contract and the billing statement. Neither the contract nor the billing statement indicated to which items of the billing the discount was applied. Taxpayer presented an analysis sheet that separated out what Taxpayer wished to represent as to the items to which the discount was applied. But this analysis was produced after the fact for the purposes of the hearing. It does not have indicia of reliability because nothing on the original contract or billing supports the breakout of the charges as to which the discount was applied.

FINDING

For the reasons stated above, Taxpayer's protest is denied.

III. Tax Administration—Negligence Penalty and Interest

DISCUSSION

When the Department issued the assessments of sales tax, it imposed a 10% negligence penalty, as well as interest, for the tax years in question. Taxpayer protests the imposition of the penalty and the assessment of interest. IC 6-8.1-10-2.1(a)(3) states that if a person is examined by the Department and incurs a deficiency that is due to negligence, the person is subject to a penalty. In general, the penalty is 10%. *See* IC 6-8.1-10-2.1(b). 45 IAC 15-11-2(b), states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

45 IAC 15-11-2(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, taxpayer incurred a deficiency which the Department determined was due to negligence under 45 IAC 15-11-2(b), and thus was subject to a penalty under IC 6-8.1-10-2.1(a). In its protest letter, Taxpayer requested a waiver of penalties and interest—but provided no documentation of reasonable cause. No affirmative explanation was provided to the Department in the letter. At the hearing, Taxpayer provided no affirmative explanation of reasonable cause. Taxpayer has not affirmatively established that its failure to pay the deficiency was due to reasonable cause and not due to negligence, as required by 45 IAC 15-11-2(c).

IC 6-8.1-10-1(a) states that a taxpayer is liable for interest on unpaid taxes. IC 6-8.1-10-1(e) states that the statutorily imposed interest may not be waived by the Department.

FINDING

For the reasons stated above, Taxpayer's protest is denied.